IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9312 OF 2005

Vishal Gorakhanath Balkawade
and others Petitioners

versus

Arun Popat Burake & others Respondents

Smt.Smita Gaidhani for petitioners.

Mr.R.V.More for respondent no.1.

Mr.M.H.Solkar, AGP for respondent no.6.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th February 2006

PC :

1. By this petition under Article 227 of the Constitution of India the petitioners challenge orders passed by Additional Commissioner, Nashik Division in R.T.S. Revision No.23 of 2005 and judgement and order dated 8th December 2004 passed by Additional Collector, Nashik in R.T.S. Appeal No.2262 of 2001.

2. It appears that the only submission which has been canvassed before the Courts below as also

before me on the strength of the sale deed in their favour by the petitioners, is that the property which is purchased by them bears Survey No.127/1 and is made subject matter of Mutation Entry No.9769 of Village Bhagur.

3. This entry could not have been set aside at the instance of respondents 1 to 5 who have a decree in RCS No.752 of 1984 in their favour. According to the learned counsel, the decree passed in their favour is with regard to a separate and distinct property i.e. Survey No.126/2B and 40 Ares land which is towards Northern side of land Survey No.127.

4. The submission has been rejected by the Additional Collector as also the revisional authority after perusing the necessary materials. Prima facie, they are of the view that the properties covered by the decree in favour of respondents 1 to 5 and that of the sale deed in favour of petitioners, are identical.

5. In my view, the observations during the course of mutation proceedings cannot be held to be conclusive and do not take away the right of the petitioners to contend that distinct property

has been sold to them. They can raise all such contentions as are raised in the present petition either in the course of execution proceedings which are admittedly pending or by filing an independent suit. All observations made in the order under challenge are always subject to the orders passed in such proceedings. Petition dismissed.

(S.C.DHARMADHIKARI, J.)